19 50.

File No. Essential Comm odities II/50 (N)

Legal Department

B BRANCH

Subject:—

Notifications under the Bombay Essential Commodities and Cattle (Control) Act 1946 (~~XXII~~ 8 1946)

9-8/E

File No. Essential Commodities II/50 (N)

330 B

Legal Department.

In place of the Labour & Housing Department drafts at pages 85-87 ante, revised draft orders are sent herewith.

19/5.

o.o. 2d J.R.D.

Additional Secretary to Government.

U.R. to L.& H.D., No. 6579, dated the 13th May 1950.

Submitted for signature.

MM

SC dt. 18-6-'50.

MR
19/6

K.S.R.
19/6

Labour and Housing Department

Bombay Castle, May 1950.

ORDER.

Bombay Essential Commodities and Cattle (Control) Act, 1946.

No. 986/46.- In exercise of the powers conferred by section 4 of the Bombay Essential Commodities and Cattle (Control), Act, 1946 (Bom. XXII of 1946), the Government of Bombay is pleased to amend the Order in the Political and Services Department No. 986/46, dated the 21th July 1947, as follows, namely :-

pll ante.

In the said Order, for paragraph 2, the following paragraph shall be substituted, namely:

"2. No person shall sell cement unless authorised in writing to do so by the Honorary Cement Adviser to the Government of India, or the Regional Honorary Cement Adviser, Bombay, or the Joint Provincial Rationing Officer (Cement), Bombay, or by a person authorised in writing in this behalf by the said Honorary Cement Adviser or the Regional Honorary Cement Adviser or the Joint Provincial Rationing Officer (Cement)

By order of the Governor of Bombay,

Secretary to Government.

MM
SC dt. 18-6-'50

Legal Department.

It appears that the Joint Provincial Rationing Officer (Cement), Bombay, was issuing permits for the sale of cement from the 1st December 1949 even though he had not been formally authorised under Government Notifications No. 996/46, dated the 24th July 1947 and the 30th June 1949 respectively by the Regional Honorary Cement Advisor, Bombay. From the 23rd May 1950, however the said Officer has been empowered under the said two orders themselves to issue a permit (vide orders at p. 91 and 93 ante). The proposal of the L.& H.D. to validate his action in issuing permits from 1st December 1949 to 22nd May 1950 is not quite necessary. Technically speaking a sale of cement under the permit issued by an officer who was not competent to issue the permit is a sale effected in breach of the relevant order. But as it is not intended to punish any person for the sale effected under an invalid permit, nothing need be done at this distance of time especially as the officer concerned has now been duly empowered to issue a permit. No notice of any such illegal sale may be taken by the police.

27/7. / J.R.Dhurandhar
o/o.
Additional Secretary to Government.

V.R to H.D. No. 10631, dated the 27th July 1950.
SC. dt. 18-6-'50.

Legal Department

The draft notification at page 8 is in order

The draft notification at page 8.- It is proposed by the Labour and Housing Department to supersede P. & S.D. Notification No 965/46-II, dated the 5th January 1946 for the following two reasons :-

(i) The Office of Assistant Housing Commissioner (Materials) Bombay, no longer exists and it is proposed to delegate the power exercisable by him to the Joint Rationing Officer (Cement) Bombay;

(ii) to substitute the area of 'Greater Bombay' for the areas of 'City of Bombay and the Bombay Suburban District'.

The second amendment has been suggested as 'Greater Bombay' now comprises of the areas within the limits of City of Bombay and the Bombay Suburban District. There would have been no objection to substituting the words 'Greater Bombay' for the words 'City of Bombay and the Bombay Suburban District' if the latter two areas have been specified in the notification alone. It, however, appears from the Brick (Control of Prices) Order, 1945 that the said Order extends to the City of Bombay, the Bombay Suburban District and the Thana, Kalyan and Bhiwandi Talukas in the Thana District. The reference to the City of Bombay is made in the Schedule to the said Order. In view of these provisions and to be consistent with the

provisions of the Order the substitution of the words "Greater Bombay" for the words "City of Bombay, the Bombay Suburban District" would not be strictly correct unless the Order itself is amended to that effect. When the Brick (Control of Prices) Order, 1945 was made the reference to the Thana Taluka was appropriate. But By R.D.Notification No. 9833/33, dated the 24th November 1948, the Thana Taluka has been split up into two namely Borivali and Thana Talukas. If now Borivali Taluka (in which the Order appears to be in force which fact will be verified by L. & H.D.) is excluded from the draft at page 5 ante the Joint Mationing Officer (Cement) would not be able to exercise any jurisdiction in the said Taluka. The draft may be amended as shown on page 5 to leave no room for doubt clause 1(2) of the Order may be amended by substituting "Borivali Thana" for the "Thana".

Id./ J.R.Dhurandhar 10/9

o.c.

Additional Secretary to Government.

U.R. TO L. & H.D. No. 13336, dated the 20th September 1950.

SS

SS dt. 18-6-'56.

Legal Department.

The Order at page 259 ante as amended is in order.

2. The draft Notifications at pages 255-257 ante are in order.

3. The Orders at pages 257-259 ante being made under section 4 of the Bombay Essential Commodities and Cattle(Control) Act, 1946, will have to be published or served, as the case may be, in the manner provided in section 6 of the Act. Section 6 of the Act is of a mandatory character and has to be complied with before the Order can be said to be validly published or served. It appears that under the Rules made under section 16 of the Act the manner of publication has been provided.

Id./ JKR. Dhumandhar. 20/9

Additional Secretary to Government.

U.O. to R.D. No. 12383 dated the 20th September, 1950.

MI

SC dt. 18-6-'50.

Legal Department.

The Political and Services Department Order No. 926/46, dated the 24th July 1947, and the Labour Department Order No. 926/46, dated the 30th June 1948, have been made under section 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1946. No retrospective effect can be given to any Order or amendment thereof made under the said Act unless the Act allows it. Moreover the amendment cannot be said to be in favour of the subject as against Government as such amendment carries with it the penalty provided in the conditions of an application to be made by a person. It is not, therefor, legally feasible to validate the action taken by the Joint Rationing Officer (Cement) within the period from 1st December 1949 to 22nd May 1950, by amending the orders in question. Not only that, if the amending notification which is proposed to be given retrospective effect is held to be invalid, the authorisation issued by any of the officers specified in the amending notification might be held to be legally ineffective as being issued under an invalid Order. The matter should, therefore, be left as it is since the action of the Joint Rationing Officer (Cement) cannot be validated by an amending Order.

Id./J.R. Dhurandhar. 8/10

Additional Secretary to Government.

D.O. to Lab. Housing Deptt, No.14021, dt. the 5th Oct. 1950.

MM SC dt. 18-6-'50.

Legal Department.

If Revenue Department has any apprehension that Sugar Factories will not carry out the undertaking in the agreement and if it would be required to enforce the undertaking in a summary manner, under the provisions of the Bombay Essential Commodities and Cattle (Control) Act, 1946, it would be necessary to issue the orders.

Sd./ J.R.Murandhar

O.O. 27/11

Additional Secretary to Government.

U.O. to R.D.No. 16754, dated the 26th November 1950.

SC dt. 18-6-'50.

Local Department.

A revised draft order to be served on Messrs. General Trading Co. is sent herewith.

2. As section 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1946, provides for making an order under a notified Order as defined in clause (3) of section 2 of the Act, it is necessary to publish the order in the Bombay Government Gazette. Unless that is done no valid order shall be deemed to have been made under the Act. After such a valid order has been made, sectio 6(1)(b) of the Act further requires that if the order made under section 4 is an order affecting a firm it shall be served in the manner provided for the service of summons in rule 3 of Order 30 of the First Schedule of the Code of Civil Procedure 1908.

Sd./ J.C.Devrandhar 30/12

a.s.

Additional Secretary to Government.

U.R. to L.& H.D. No. 18477, dated the 30th December 1950

MK

SC dt. 18-6-'56.